

**REMARKS**

Claims 1-15 are all the claims pending in the application. Claims 1 and 2 have been amended to make an editorial change.

Entry of the above amendment is respectfully requested.

**Anticipation Rejection over Mikito et al.**

On page 2 of the Office Action, in paragraph 3, claims 1-9 and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mikito et al. (JP 10-208730, abstract and Computer translation).

In response, Applicant notes initially that metallic lithium means lithium of which the oxidation number is zero. Therefore, metallic lithium does not include a lithium-containing host material like graphite or a lithium-containing composite oxide like  $\text{Li}_{1+x}\text{Mn}_2\text{O}_4$ .

Applicant's claims 1 and 2 recite that metallic lithium is used as a negative active material. However, the negative active material described in Mikito et al is a host material which is capable of storing and releasing lithium ions, like a graphite or carbon, **not** metallic lithium. Applicant wishes to emphasize that lithium ion in the host material is absolutely not the metallic lithium of the present claims 1 and 2. Therefore, Applicant submits that it is clear that present claims 1 and 2 are novel over Mikito et al.

The Examiner describes in page 2, item 4 of the Office Action dated October 6, 2003, "Mikito et al. teaches a non-aqueous electrolyte secondary battery comprising a positive electrode comprising a lithium metal oxide such as  $\text{Li}_{1+x}\text{Mn}_2\text{O}_4$  ( $0 \leq x \leq 1$ ) and a material having

lithium ion release potential at a lower potential than a lithium ion release potential of the lithium metal oxide". However, this description does not show that Mikito et al. teaches metallic lithium electrically connected to the positive electrode, because metallic lithium means lithium of which the oxidation number is zero. Therefore, Applicant submits that it is clear that present claims 1 and 10 are novel over Mikio et al.

Applicant's claims 10 and 11 refer to metallic lithium on a negative electrode. Again, Applicant submits that it is therefore clear that present claims 10 and 11 are novel over Mikito et al.

In view of the above, Applicant submits that the present claims are not anticipated by Mikito et al. Accordingly, withdrawal of this rejection is respectfully requested.

#### **Anticipation Rejection over Yukio et al.**

On page 3 of the Office Action, in paragraph 5, claims 1, 3, 9-10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Yukio et al. (JP 5-144471, abstract).

In response, Applicant notes that the Examiner describes in page 3, lines 3-5 of the Office Action dated October 6, 2003, that "Yukio et al. teaches a secondary battery with nonaqueous electrolyte comprising ... a negative electrode made of carbon material" (emphasis added). However, Applicant's claim 1 recites that metallic lithium is used as a negative active material, and Applicant's claim 10 refers to metallic lithium on a negative electrode. Carbon material is absolutely not the metallic lithium of present claims 1 and 10. Therefore, Applicant submits that it is clear that present claims 1 and 10 and their dependent claims are novel over Yukio et al.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Application No.: 09/899,208

Attorney Docket No.: Q65355

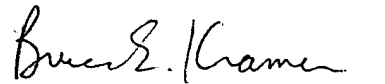
In view of the above, Applicant submits that the present claims are not anticipated by Yukio et al. Accordingly, withdrawal of this rejection is respectfully requested.

### Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Bruce E. Kramer  
Registration No. 33,725

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: January 6, 2004